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ABSTRACT

The examination of Montana's teacher tenure laws as mandated by House Joint Resolution 43, required a thorough review of the legislative development of the teacher employment laws, a summary of relevant case law on the rights of school boards and teachers, an awareness of the philosophical postures of the affected parties, and a dispassionate look at the severity of the problems suggested in the study resolution. In addition, during the study process, the Montana Supreme Court decided a number of cases that had direct bearing on various study concerns. This report therefore explores the legal aspects of each concern of the study resolution, indicates the specific issues that emerged during the process of the study, illustrates various options for addressing the issues, summarizes the testimony of interested parties, and documents the subcommittee's actions and conclusions. The first part is a brief history of teacher tenure laws in Montana. The second part addresses (1) the issues surrounding the substantive and procedural rights of tenured teachers and (2) the advantages and disadvantages of the tenure system for teachers, school districts, and communities. The third part examines the issues surrounding the present system of requiring a certain term of years for tenure qualification, while the fourth section examines issues surrounding the fiscal restraints and uncertainties involved in applying the tenure laws. The last two topics addressed are collective bargaining statutes and practices related to tenure and due process alternatives to the current tenure system. References are included, along with subcommittee deliberations and the text of the proposed legislation. (TE)

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Teacher Tenure in Montana:

An Investigation of the Laws and Issues

A Report to the 49th Legislature Joint Interim Subcommittee No. 4

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TEACHER TENURE IN MONTANA:

AN INVESTIGATION OF THE LAWS AND ISSUES

A REPORT TO THE 49TH LEGISLATURE

JOINT INTERIM SUBCOMMITTEE NO. 4

November 1984

Published by

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Room 138
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HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SCHOOL TEACHER TENURE LAWS AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, there have been several bills introduced in the 47th and 48th Legislatures to modify present law regarding teacher tenure; and

WHEREAS, there is at the present time a recognition among legislators, teachers, administrators, and school district trustees in the state that this is an appropriate time for a comprehensive examination of teacher tenure laws; and

WHEREAS, the present laws on teacher tenure in some respects fail to harmonize with actual fiscal restraints and conditions of school districts and with collective bargaining practices and may in some instances be applied inequitably, causing hardship to some teachers and granting unwarranted job security to others; and

WHEREAS, as was demonstrated during hearings on teacher tenure bills introduced in the current session, the subject is complex and controversial in nature and thus was not amenable to a solution during the session; and

WHEREAS, because alterations in existing tenure law could have significant and long lasting personal and fiscal effects on both teachers and school districts, there is a real need to study teacher tenure through exhaustive public hearings and deliberations that would lead to proposed laws governing the employer-employee relationship in Montana's public schools that represent an equitable accommodation among all concerned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study present teacher tenure laws, specifically examining:

(a) the present system of requiring a certain term of years for tenure qualification;

(b) the substantive and procedural scope of teacher tenure provisions and the advantages and disadvantages to teachers, school districts, and the community;

(c) the fiscal restraints, uncertainties, and timetables that affect school districts in the application of tenure laws;

(d) collective bargaining practices related to tenure; and

(e) inequities in present tenure laws that may cause hardship to individual teachers, school districts, administrators, and to the community at large.

(2) That the committee is urged to study and carefully consider due process and collective bargaining alternatives to present teacher tenure laws.

(3) That the committee report its findings to the 49th Legislature together with recommendations for legislation, if any, necessary to implement such findings.

SUMMARY OF RECOMMENDATIONS

Joint Interim Subcommittee No. 4 recommends that the 49th Legislature:

1. Improve the due process in teacher dismissal and termination cases by enacting LC 20, a bill to provide:

   (a) a teacher with notice of intent to recommend dismissal while under contract;

   (b) a tenure teacher with notice of intent to recommend termination of services; and

   (c) a hearing on the recommendation before the board of trustees prior to any dismissal or termination action.

2. Enact LC 22, a bill to provide that a tenure teacher who is employed in an administrative position may be assigned to a teaching position with a reduction in salary.

INTRODUCTION TO THE ISSUES RAISED IN HJR 43

House Joint Resolution 43 requested a comprehensive examination of public school teacher tenure laws in Montana. The resolution offered the following assumptions as a basis for study:

-- That the present teacher tenure laws may "fail to harmonize with actual fiscal restraints and conditions of school districts";

-- That the application of the tenure provisions may not be compatible with current collective bargaining practices; and

-- That the tenure provisions "may in some instances be applied inequitably, causing hardship to some teachers and granting unwarranted job security to others".

The impetus for the study resulted from dialogue during the past three legislative sessions regarding modifications and alternatives to the teacher tenure statutes. Most of these attempts at change were stalled at the committee level. Testimony and discussion revealed philosophical differences between teachers and their employers with respect to:

-- the value of a probationary period prior to an award of tenure and its concomitant rights;

-- the due process that should be afforded nontenure and tenure teachers upon termination of services or upon dismissal during the contract year;

-- the validity of accepted or statutory reasons for termination or dismissal of teachers;

-- the role of evaluation of teachers by supervisory staff; and

-- the effect of the aforementioned issues on the quality of teachers and education in Montana.

The study resolution recognized that alternatives to the tenure system or alterations of the various tenure and termination provisions could have significant and long-lasting personal and fiscal effects on both teachers and school districts. The resolution challenged a study committee to thoroughly investigate the issues surrounding teacher tenure and to arrive at recommendations that would represent equitable accommodations among all concerned parties.

HJR 43 made the specific request for an examination of:

-- the rationale for and alternatives to the present probationary period for teachers prior to the granting of tenure;

-- the substantive and procedural rights of teachers and school boards under statutory and case law;

-- the fiscal restraints, uncertainties, and timetables that affect school districts in the application of the tenure laws;

-- collective bargaining statutes and practices related to tenure;

-- the perceived inequities in the tenure system that may cause hardships to individual teachers, school districts, administrators, or the community at large; and

-- due process and collective bargaining alternatives to the present tenure laws.

It is significant to note that soon after initiation of the tenure study, a barrage of reports on the state of American education drew attention to the quality of the teaching profession. Although this nationwide education reform movement was reluctant to place significant blame on teacher protections, the interim study did acquire the added dimension of addressing public concern regarding the linkage between quality education in Montana and our state's teacher tenure system.

MONTANA'S TEACHER TENURE LAWS AND ISSUES

Introduction

The examination of Montana's teacher tenure laws, as mandated by HJR 43, required a thorough review of the legislative development of the teacher employment laws, a summarization of relevant case law on the rights of school boards and teachers, an awareness of the philosophical postures of the affected parties, and a dispassionate look at the severity of the problems suggested in the study resolution. In addition, during the study process, the Montana Supreme Court decided a number of cases that had direct bearing on various study concerns. And as mentioned in the previous report section, the study was colored by the emerging educational reform movement and the public concern over quality teaching and student performance.

This report is designed to:

1. explore the legal aspects of each study resolution concern;
2. indicate the specific issues that emerged during the study process;
3. illustrate the various options for addressing the issues;
4. summarize the testimony of interested parties; and
5. document the Subcommittee's actions and conclusions.

I. A Brief History of Teacher Tenure Laws in Montana

Public school teachers in Montana were first granted tenure rights in 1913.[1] The legislation was encouraged by a National Education Association campaign for tenure laws that had begun in the eastern states as early as 1885.[2] By 1913, even in the rural west, the commitment to public education was strong enough to recognize that good teachers could not be procured and retained without the promise of permanence, income security, and academic freedom to teach.

The original tenure statute granted tenure after the election of a teacher for the second consecutive year. A 1927 amendment increased the "probationary" period for teachers by 1 year and provided that the teacher would be reelected thereafter at the same salary.[3]

Many years before the establishment of tenure rights, Montana territorial law (1871) had required school trustees to have "sufficient cause" before dismissing a teacher who was under an employment agreement with a district for a school year.[4] In 1895, teachers were granted further statutory protection against unfair dismissal during a school year.[5] A teacher dismissed for "alleged unfitness, incompetence, or violation of rules" could appeal to the county superintendent for a ruling, and if good cause could not be proven, the teacher was entitled to reinstatement and to compensation for time lost during the pending of appeal.

From 1927 to 1947, there were no significant changes in the teacher employment laws. During that period, the Montana Supreme Court was called upon numerous times to decide procedural questions, usually finding in favor

of teachers' rights.[6] It was[illegible] versial 1947 case of Eastman v. [illegible] (Helena) that the court expre[illegible] Legislature had never intended [illegible] employment status under the "so-call[illegible] act".[7] According to the Court, a [illegible] refuse, at any time, to renew a [illegible] without cause and need not give [illegible] actions. This decision challenged the [illegible] to pick up the gauntlet and to clarify [illegible] the tenure statute. The law was [illegible] "specific reasons for the failure of r[illegible] requiring fair termination procedures. [illegible] amendments did not clarify what reasons for [illegible] were permissible or even that "good [illegible] necessary. The action did recognize, as [illegible] courts, that, after a certain number of [illegible] service, a teacher had a legitimate claim of entitle[illegible]ment to continued employment and this entit[illegible] should not be impaired without "due process of l[illegible] required by the 14th Amendment of the U.S. Constitution. Due process, to be discussed in detail [illegible] was interpreted as a teacher's right to timely notice of a nonrenewal action and to an opportunity to hear and respond to a school board's reasons for the action.

The next alteration in the tenure law came in 1957 when the Legislature made "reelection automatic after the fourth consecutive year" of employment with a district.[9] This change extended the so-called probationary period to three years.

The complete recodification of Montana's school laws in 1971 resulted in some significant changes in the structure and provisions of the tenure law in order to

comply with previous court cases and attorney general opinions: a teacher elected as a tenure teacher must be reelected "year to year thereafter at the same salary and in the same or comparable position"; and teachers were provided with appeal rights to the county superintendent and subsequently to the state superintendent upon a board decision to terminate services.[10]

The 1973 Legislature provided for notification of reelection for nontenure teachers.[11] A 1975 amendment permitted nontenure teachers to request from the school board a statement in writing of the reasons for termination of employment.[12]

A more complete history of teacher employment legislation and court cases is available in the staff report to Joint Interim Subcommittee No. 4 entitled "Teacher Tenure in Montana: An Overview of the Laws and Issues," revised March 1984.

II. The Issues Surrounding the Substantive and Procedural Rights of Tenure Teachers and the Advantages and Disadvantages to Teachers, School Districts, and the Community

A. Background

An investigation of the constitutional and statutory rights of tenure teachers and court interpretations of those rights is essential to an understanding of perceived inequities in the present tenure system and of permissible alterations or alternatives to that system, as requested by the study resolution.

As an introduction to the rights of teachers, a brief discussion is in order for the terms "substantive" and "procedural" rights. Substantive rights are most simply described as those rights guaranteed by the U.S. and Montana Constitutions such as the rights to "liberty" and to "property", and those constitutionally valid statutory rights granted by the Legislature. Procedural or "due process" rights are those safeguards or channels the government must provide for the protection of an individual's substantive rights.

The "due process" clause of the 14th Amendment to the U.S. Constitution is the foundation for most of the judicial interpretation of the substantive and procedural rights of teachers (and all citizens). The Amendment states that:

> ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The 1972 Montana Constitution also contains, in Article II, Section 17, the protection that, "No person shall be deprived of life, liberty, or property without due process of law".

To compel due process protections, the teacher must show that a sufficient "property" or "liberty" interest is present. Typically, state laws, such as tenure and contract laws, control whether a property interest, a legitimate claim of entitlement to continued employment, exists. A probationary or nontenure teacher may assert a property right when dismissed prior to the end of a contract, but it is generally acknowledged that no property interest exists beyond the end of the nontenure teacher's contract. However, even nontenure teachers have due process rights if the grounds for nonrenewal of contract are found to relate to a constitutionally protected activity, such as controversial expression, union activity, or one's race or sex.

The "liberty" interests of any teacher may be infringed and require due process if a school board or administrative action imposes a stigma or other disability that forecloses the teacher's freedom to take advantage of other employment opportunities or otherwise injures that employee's good name or reputation in the community.

Certain minimum processes of law are due an employee who is deprived of a liberty or property interest.

Those procedures include notice of the impending action, a statement of charges, and the right to present a rebuttal at a fair and impartial hearing.

The aforementioned discussion of substantive and procedural due process rights is founded on numerous U.S. Supreme Court decisions interpreting the 14th Amendment and its relationship to employment.[13]

In some ways, the previous discussion of teachers' rights may have been a case of putting the constitutional "cart" before the statutory "horse". As was noted, the right to due process protections can be triggered by the existence of a legitimate "property" interest. The statutory grant of tenure, in 20-4-203, MCA, after acceptance of the fourth teaching contract, is the establishment of such a property interest. The Montana Supreme Court is clear on the nature of this right.

> A teacher's tenure is a substantial, valuable, and beneficial right that cannot be taken away except for a good cause. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P2d 209 (1954).

The tenure statute mandates that a tenure teacher be reelected "at the same salary and in the same or a comparable position of employment as that provided by the last executed contract ...." For a number of years, the 1943 Montana Supreme Court decision in Smith v. School District No. 18 has been controlling on this phrase.[14] Where a teacher with 7 years teaching experience in a town school was assigned to a rural ungraded school, the Court said:

> The purpose of enacting the Teacher Tenure Act is not merely to insure teaching employment, but it is also to insure teachers . . . security in the position, rank, grade, or status they have attained.

Most recently, the Court, in the Sorlie case, narrowed that opinion by saying:

> Reassignment [from administrator to classroom teacher], without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws.[15]

It is appropriate at this point to note the constitutional rights of school boards in Montana. The 1972 Montana Constitution made it clear in Article X, Section 8, that:

> The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

The framers of the Constitution were reaffirming a longstanding tradition in Montana of local control of the schools. The courts have acknowledged this fundamental right when called upon to balance, as they must, the government's interest in providing a sound educational system with the substantive and procedural rights of teachers employed in that system.

The statutory basis for the rights of school board trustees is found in 20-3-324, MCA. Under that section, trustees have the power and duty to:

> . . . employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the

board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4 ....

B. 1. Issue

The tenure statute does not list permissible causes for termination of services, and in consideration of the constitutional, statutory, contractual, and judicially-mandated rights of teachers, it is difficult to execute a termination of services.

2. Comments

Since the statute on termination of tenure teachers does not specify just causes for termination, school boards must rely on case law to determine permissible reasons and must take care to avoid constitutionally protected rights, such as free speech and union activity. Courts have mandated that reasons must relate to teaching performance and be based on substantial, credible evidence. The current state superintendent has stressed in recent appeal decisions that before a termination, the record should clearly show an administrative attempt to identify and remediate serious teaching problems and show that successful correction was not possible.[16]

Legislation has been introduced in the past several sessions that would have enumerated the allowable "just causes" for termination of services.[17]

During Subcommittee deliberations, teacher representatives suggested that sound evaluation practices, warning notices, and remediation periods could not only contribute to successful terminations but could also result in the improved performance by all teachers. The Subcommittee learned from a staff report on "Teacher Evaluation in Teacher Employment Issues" that 28 states have statutory requirements for teacher evaluation and most of those states link evaluations to termination procedures.[18]

3. Subcommittee Action and Conclusions

The Subcommittee heard from a variety of interested persons that the absence of specific causes for termination is not so much a problem as is the sufficient and proper documentation of and remedial help for teaching deficiencies. Strict adherence to the statutory procedures for termination is also essential so that the case will stand up to administrative review and court scrutiny.

C. 1. Issue

Would the rights of teachers be lessened if statutory tenure were eliminated?

2. Comments

If the status of tenure were eliminated, teachers could lose the right to be rehired at the same salary and in the same or comparable position, unless those conditions of employment were

established in collective bargaining. What would not change would be the right to sufficient cause for termination and the right to due process, such as notice of the reasons for the action, an opportunity for a hearing on the reasons, and an avenue for appeal of the decision. The courts have been stressing these basic considerations for both public and private employees.[19]

3. Subcommittee Action and Conclusions

The Subcommittee requested and discussed a draft bill, LC 55, that would have eliminated the status of tenure for teachers. All teachers would have been afforded "just cause" reasons for termination and a hearing before the board of trustees prior to a final and binding decision of the board. The legislation was modeled after North Dakota's termination procedures. Teacher representatives felt that the proposal would place teachers on "permanent probation" and that a final and binding decision by the board would place teachers at a serious disadvantage. Several Subcommittee members and representatives of school boards argued that this system would address public concern over tenure rights and yet provide fair termination procedures. The Subcommittee failed to recommend LC 55.

D. 1. Issue

The statute on dismissal of a teacher under contract does not provide for due process prior to dismissal.

2. Comments

There are no provisions in the dismissal law, 20-4-207, MCA, for a specific notice of reasons for an impending dismissal or an opportunity to meet the charges prior to dismissal. A 1976 Montana Supreme Court decision[20] mandated such requirements for school boards, basing the decision on various court precedents.[21] If a school board was unaware of this mandate, a teacher could be deprived of the due process afforded others in the same circumstances.

Proper due process is essential in dismissal cases, as there is little legal doubt that a contract is a property interest until it is expired. The permissible statutory reasons for dismissal are harsh enough to promote a stigma against future employment. Also, such reasons as "immorality" must be carefully considered if the "immoral" conduct relates in any way to a constitutionally protected right. Further, if the "good cause" is not one specifically listed, it must at least relate to teaching performance.

3. Subcommittee Action and Conclusions

The Subcommittee approved LC 20, an act to provide a teacher with notice of intent to recommend dismissal of the teacher while under contract with a school district and to provide for a hearing on the recommendation before the board of trustees of a district prior to the dismissal of a teacher. See Appendix for LC 20.

III. The Issues Surrounding the Present System of Requiring a Certain Term of Years for Tenure Qualification

A. Background

Under the tenure law, a teacher is considered in a probationary status until elected for tenure by the offer and acceptance of a contract for the fourth consecutive year of employment. Since 1975, a nontenure teacher who is terminated may request from the trustees in writing the reasons for termination.

Legislation has been introduced in the last several sessions to reduce or eliminate the probationary period in order to allow teachers earlier access to due process and appeal rights.[22] There have been a number of appeals to the state superintendent on the sufficiency of reasons given for termination and on whether nontenure teachers have a right to a due process hearing before the county superintendent on the reasons.[23] In general, case law indicates that a nontenure teacher has no automatic property interest to trigger due process, but would be so entitled if the nonrenewal was based on constitutionally protected activities or if public knowledge of the reasons was damaging to the person's reputation and employability.[24]

B. 1. Issue

There is need for clarity on whether a nontenure teacher has the right to a hearing before the

county superintendent to contest the sufficiency and/or content of reasons given for termination.

2. Comments

In March 1984 of the interim study, the Montana Supreme Court heard and decided a nontenure termination appeal based on whether the reason "to find a better teacher" complied with statutory intent.[25] The Bridger case found its way to the Court because a grievance procedure in the Bridger Education Association's contract with the school board allowed for immediate judicial review of contested terminations of nontenure teachers. Generally, when the state superintendent has heard such appeals, that reason has been viewed as adequate.

The Court, in Bridger, clarified that "a nontenured teacher is entitled to a notice which states what undesirable qualities merit a refusal to enter into further contract". The case did not suggest that a nontenure teacher has an automatic right to contest the reasons. Since the decision, county superintendents have been unsure as to whether to hear any or all appeals concerning the sufficiency of reasons. The Montana Association of County School Superintendents requested the Subcommittee to provide legislative clarification on this issue.

3. Subcommittee Action and Conclusions

The Subcommittee discussed this issue but did not make a recommendation.

C. 1. Issue

Is there a need to change the length of probationary period or the rights of nontenure teachers?

2. Comments

All but a few states have a probationary period (ranging from 1 year to 5 years), in which few due process rights are granted. A number of states do provide for a hearing or informal conference prior to nonrenewal of a nontenure teacher. Many states require that nontenure teachers be evaluated once or twice a year and be offered remediation help prior to a nonrenewal for performance.[26]

The Subcommittee heard from school board representatives and administrators that the current probationary period allowed adequate time to judge those who may deserve tenure and any lessening of the observation time might result in poor choices and eventual termination controversies.

Teacher representatives felt that the period prior to tenure protections was longer than afforded other public employees. They felt that many good teachers are released for purely economic reasons.

3. Subcommittee Action and Conclusions

The Subcommittee did not choose to recommend action on this issue but did consider a type of due process for all teachers under LC 55, modeled after North Dakota law.

IV. The Issues Surrounding the Fiscal Restraints and Uncertainties That Affect School Districts in Application of the Tenure Laws

A. Background

School districts, especially the many small ones in Montana, are often faced with a variety of conditions which can run counter to obligations under the tenure laws: fluctuating enrollment, which effects faculty size; proper faculty certification to fulfill state-required programs and classes; and failure to pass local mill levies in support of school program needs. School districts can rely on case law which suggests that even tenure teachers can be terminated in situations of genuine economic necessity.[27] The state superintendent has held that a school board must show a justifiable need for a reduction in force (RIF) and must show that no nontenure teacher would exclusively be teaching the subjects which had been taught by a tenure teacher who was let go in a RIF.[28]

B. 1. Issue

Clarification is required on whether administrators may be reassigned to a classroom position with a concomitant reduction in salary.

2. Comments

In July 1983, the Montana Supreme Court, in the Sorlie case, said that "reassignment without reduction in salary, for legitimate financial

contraints is justifiable and not contrary to tenure laws".[29] A dissenting opinion held that, "[S]uch a holding gives only token recognition to the principles of tenure". The Subcommittee heard testimony that such reassignments should be allowed, along with a return to the classroom salary level.

3. Subcommittee Action and Conclusions

The Subcommittee approved LC 22, allowing a teacher who is employed in an administrative position to be assigned to a teaching position with a reduction to the classroom salary that would have accrued if the teacher had been continuously employed in the new assignment rather than in the administrative position. See Appendix LC 22.

C. 1. Issue

Clarification is necessary on whether a school board can terminate a tenure teacher for genuine economic necessity.

2. Comments

The tenure statutes do not address termination for justifiable economic necessity. During Subcommittee study, the Montana Supreme Court, in the Massey case, held that a tenure teacher was terminated without good cause when a nontenure teacher was retained to fill a position for which the tenure teacher was certified to teach but for which he had no recent experience.[30] The state

superintendent, in his administrative appeal decision, had held that "for the purpose of interpreting the comparable position requirement of 20-4-203, MCA, teaching experience is necessary." The basis for this opinion is shaky in that the certification law does not require experience; nor is there an indication in tenure law that anything other than proper certification is required to qualify for tenure.

The Subcommittee heard from school board representatives and administrators that school boards need more leeway in this area. Teacher representatives suggested that reduction in force policies were better left to the local collective bargaining process. The suggestion was made that the certification law might require a certain period of teaching experience for qualification.

3. Subcommittee Action and Conclusions

The Subcommittee did not give final approval to LC 21, a bill draft to allow trustees of a district to terminate the services of a tenure teacher when the financial condition of the district requires a reduction in the number of teachers employed or a reduction in funding for the school program for which the teacher is employed.

V. The Issues Surrounding Collective Bargaining Statutes and Practices Related to Tenure

A. Background

The 1971 Legislature recognized, by enacting the Professional Negotiations Act for Teachers:

> .... the rights of professional school employees to form, join, or assist professional employees' organizations to negotiate with their governing boards regarding the terms and conditions of professional service ....[32]

In 1975, that Act was repealed and public school teachers were included as "public employees", and school boards were considered "public employers", under the collective bargaining laws governing other public employees.[33] Those laws had been originally enacted in 1973. It is the legislative policy in 39-31-101, MCA,

> .... to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

Under 39-31-301, MCA, school boards have "management rights", which include the prerogative to "hire, promote, transfer, assign, and retain employees", and to "relieve employees from duties because of lack of work or funds. Under 39-31-305(2), MCA, to bargain collectively is

> .... to meet .... and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an

agreement on any questions arising thereunder... (Emphasis supplied.)

Other conditions of employment can, and often do, include: additional due process for terminations of tenure and nontenure teachers, RIF policies, and evaluation procedures.

Under 39-31-306(2), MCA, an "agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements". The Board of Personnel Appeals can be called upon to supply a trained arbitrator under 39-31-310 and 39-31-311, MCA. Or, the final step in a grievance procedure may include the right to appeal a decision to the district court, as in the Bridger case discussed on page 20.

B. 1. Issue

Negotiation of conditions of employment under the collective bargaining act can be limited by conflicts with management and teacher rights in school law statutes.

2. Comments

Jim McGarvey, representing the Montana Federation of Teachers, suggested that school boards and teacher bargaining representatives be allowed to negotiate the waiver of statutory tenure rights and to negotiate substitute provisions to satisfy local situations and to avoid conflicts between

collective bargaining rights and rights elsewhere in the law.

Representative Ralph Eudaily (R-Missoula) asked the Subcommittee to review legislation introduced in previous sessions that would have waived the tenure laws for any district involved in a collective bargaining agreement.

3. Subcommittee Action and Conclusions

The Subcommittee debated the merits of draft legislation based on Jim McGarvey's proposal. The draft bill included the provision that whenever the two parties failed to negotiate the waiver of the tenure laws for the ensuing school year, each teacher would return to his/her tenure status that would have existed if no waiver had been negotiated in prior years.

Teacher representatives argued that the grievance procedures allowed under collective bargaining could replace the lengthy appeals process. School board representatives expressed the concern that teachers would have an advantage because they would never bargain for less than the current tenure rights.

The Subcommittee failed to adopt LC 54 on a tie vote.

VI. Issues Surrounding Perceived Inequities in the Tenure System that May Cause Hardships to Individual Teachers, School Districts, Administrators, or the Community at Large

A. 1. Issue

The process for appealing a termination or dismissal decision can be lengthy, costly, and a burden to the teacher and the school board involved.

2. Comments

Under current law, a teacher can appeal a board termination or dismissal decision to the county superintendent who has 90 days to conduct a "hearing of record" and decide the appeal.[34] Either the board or the teacher can appeal that decision to the state superintendent who has 90 days to review and act upon the county superintendent's decision. Following that administrative review, either party can appeal to the district court, and subsequently to the Montana Supreme Court, to review the administrative record in accordance with the Montana Administrative Procedure Act (MAPA).

The Subcommittee heard testimony on and discussed the following options to reduce the steps and time involved in appeal of school controversy cases: reducing the time limit for the county superintendent to hear and decide an appeal; elimination of the "reconsideration" hearing before the school board that a teacher may

request; allowing terminated or dismissed teachers a single appeal to an impartial hearing officer whose decision would be final and binding; having the de novo or hearing of record at the school board level, with appeals for administrative review going straight to the state superintendent; and eliminating the opportunity to appeal to district court by establishing the state superintendent's level as a "tenure court" that would review the administrative record as the court does under MAPA .

The Subcommittee learned from an Office of Public Instruction (OPI) survey that between 1979 and 1983 there were approximately 300 school controversies.[35] Ninety of those were appealed to the state superintendent, and 12 of those were subsequently appealed to district court. Three cases went on to the Supreme Court.

The OPI offered the following recommendations on the school controversy process:[36]

1. A local school board would continue to conduct the informal hearings required by law and would render a decision; if appealed, the county superintendent would have 45 days to conduct a complete hearing of record. County superintendents would be required to complete a training program on due process hearings; and

2. Appeals to the state superintendent would be reviewed and decided within 90 days; and a final appeal from the superintendent would go

directly to the Montana Supreme Court (as do decisions from the Workers' Compensation Court). The entire process could take no longer than 145 days.

Testimony received from a variety of interested persons encouraged the continuation of the role of the county superintendent as the original factfinder in school controversy cases. The county superintendents have played a role in due process for dismissed teachers since 1907. Since 1982, their role has been clearly defined by the adopted guidelines for hearing school controversies in the Administrative Rules of Montana. Even before adoption of the rules, the Montana Supreme Court upheld the role of the county superintendents in the appeals process.

3. Subcommittee Action and Conclusions

The Subcommittee approved LC 53, an act to revise the procedures for termination of the services of a tenure teacher; to provide a hearing for a tenure teacher before the trustees of a district prior to consideration of a recommendation for termination; and to eliminate the reconsideration hearing on the termination action. By approval of the Subcommittee Chairman, LC 53 was cancelled and the content of the bill was included in LC 20 for convenient presentation to the 49th Legislature. See Appendix for LC 20,

B. 1. Issue

The role of formal teacher evaluation in teacher employment decisions is unclear.

2. Comments

The study resolution does not specifically request an examination of the role of evaluation in teacher employment issues. However, the Subcommittee approved this topic within the study plan because the case could be made that sound evaluation practices contribute to defensible terminations and to a reliable basis for the reward of tenure.

Montana has no statutory mandate to perform teacher or administrator evaluations. Since 1973, the Board of Public Education has required, as a standard for school accreditation, that:

> The board of trustees shall adopt specific policies and procedures for evaluation of certified staff. A comprehensive individual personnel file based on specific evaluation of every teacher, principal, supervisor, and other certified staff employed in the district shall be maintained. The individual being evaluated shall be provided with a copy of the written evaluation and shall be granted access to his/her evaluation file.[37]

The Board further recommends that policies and procedures shall be developed in consultation with administrators, teachers, other staff members and students. Also teachers, administrators, and pupils should have the opportunity to comment on the evaluation of these policies and procedures.[38]

Testimony before the Subcommittee suggested that formal performance appraisal of teachers is a

common practice in Montana schools, especially in schools with administrative personnel. By statute, the county superintendent can perform evaluations in districts without administrators.[39] Evaluations can be used as "substantial evidence" for just cause to terminate a teacher. The current state superintendent, in the Kisling appeal, has emphasized the need for clear documentation of specific problems and attempts to remediate in establishment of just cause to terminate.[40]

The Office of Public Instruction informed the Subcommittee of the Montana Educational Challenge Project that is designed to improve the school accreditation process and to examine current teacher evaluation techniques and standards in 125 pilot schools across the state. The results of the Project will be available in December 1984.

3. Subcommittee Action and Conclusions

The Subcommittee heard from school board and teacher representatives that a statutory mandate to evaluate teachers would be unnecessary as most schools have satisfactory evaluation procedures.

VII. Consideration of Due Process Alternatives to the Current Tenure System

The Subcommittee recognized that, although the abolishment of tenure rights is a legislative prerogative, case law dictates the establishment or retention of fair termination and dismissal procedures to meet constitutional due process requirements. In addition, a body of case law and statutory law is developing in Montana and elsewhere that demands "good faith and fair dealing" by employers toward employees, even those in probationary status.

The Subcommittee entertained the following due process alternatives to the tenure system, in addition to the proposal set forth in LC 55 discussed on page 17.

A. Representative Tom Jones submitted the following option, designed to provide due process for all teachers in a district and to complete a termination action in 70 days.[41]

1. Teaching problems are identified through evaluation. (5 days)

2. Teacher is informed of problems and attempts remediation with assistance of administrator or peers. (20 days)

3. If remediation is successful, informal resolution is made to continue observations, etc., for a period of time.

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4. If remediation is unsuccessful, administrator recommends termination and board gives notice of termination. (10 days)

5. Teacher can request hearing officer from state superintendent's list of potential hearing officers.

6. Hearing is scheduled; hearing officer makes evaluation (gathers evidence, observes teacher, hears both sides). (20 days)

7. Decision is final and binding. (5 days)

B. During the last two legislative sessions, bills amending the tenure laws offered the following proposals to provide due process to all teachers, clarify "just causes" for termination, and streamline the appeals process:[42]

1. School board may terminate services of any teacher at end of contract year for specific causes:

   a. unfitness;

   b. incompetence;

   c. violation of the adopted policies of school board; or

   d. whenever the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

2. Teacher may request written reasons for termination and subsequently request a reconsideration hearing before the board.

3. If board affirms decision, teacher may appeal to final and binding arbitration on specific grounds only, such as lack of evidence or improper board conduct.

4. Teacher requests list of arbitrators from Board of Personnel Appeals or state superintendent. School board and teacher agree on arbitrator.

5. Arbitrator conducts hearing and renders a decision that is final and binding.

6. Parties share costs equally.

C. The option calling for a 3-year contract for tenure was submitted to the Subcommittee by a number of citizens groups from Bozeman.[43] The provisions are as follows:

1. 2-year or 3-year probationary period with same termination provisions as current law.

2. After a successful probationary period, teacher is offered a 3-year contract.

3. For every subsequent year of satisfactory performance, the teacher receives a 3-year extension to the contract, thereby guaranteeing protection and job security for 3 years at a time.

4. A tenure teacher who has an unsatisfactory year is not offered an extension but has the 2 years that remain on the last contract to

improve classroom performance. Loss of tenure results only from 3 successive years of unsatisfactory performance ratings.

D. Subcommittee Action and Conclusions

The above options were acknowledged but were not debated to any extent during deliberations. As discussed on page 17, the Subcommittee considered and rejected the due process system outlined in LC 55.

REFERENCE NOTES

1. Chapter 76, Laws of Montana, 1913. This legislation enacted a complete school code for Montana.

2. Howard K. Beale, Are American Teachers Free? (New York: Charles Scribner's Sons, 1936), pp. 464-467.

3. Chapter 87, Laws of Montana, 1927. (Section 1075, R.C.M. 1921.)

4. Section 27, Codified Statutes of Montana of 1871.

5. Section 1848, Political Code, Montana Codes Annotated of 1895.

6. McBride v. School District No. 2, 88 Mont. 110, 290 P. 252 (1930); Day v. School District No. 21 of Granite County, 98 Mont. 207, 38 P.2d 595 (1934); Moses v. School District No. 53 of Lincoln County, 107 Mont. 300, 86 P.2d 407 (1938).

7. Eastman v. School District No. 1, 120 Mont. 63, 180 P.2d 473 (1947).

8. Chapter 166, Laws of Montana, 1949.

9. Chapter 26, Laws of Montana, 1957. (Re-enrolled as section 75-2401, R.C.M. 1947).

10. Chapter 5, Laws of Montana, 1971. Section 75-2401, R.C.M. 1947 was recodified as 75-6103, 75-6104, and 75-6105, R.C.M. 1947. Dismissal of teacher under contract was recodified as 75-6107, R.C.M. 1947.

11. Chapter 324, Laws of Montana, 1973.

12. Chapter 142, Laws of Montana, 1975.

13. David Rubin, The Rights of Teachers: The Basic ACLU Guide to a Teacher's Constitutional Rights, revised edition (Toronto: Bantam Books, 1984), pp. 174-302.

14. Smith v. School District No. 18, 115 Mont. 102, 139 P.2d 518 (1943).

15. Sorlie v. School District No. 2, 667 P.2d 400, 40 St. Rep. 1070 (1983).

16. Kisling v. School District No. 2A(C), Phillips County, OSPI No. 14-81, 1 Ed. Law 113, April 1982.

17. House Bills 400 and 401, 1981 Legislature; House Bills 395 and 396, 1983 Legislature.

18. Montana Legislative Council, "Teacher Evaluation in Teacher Employment Issues," staff report to Joint Interim Subcommittee No. 4, March 1984.

19. For further discussion of tenure rights, see:

    Maura K. Quinlan, "State Teacher Tenure Statutes: An Appeal for Repeal," Journal of Legislation, 9 (Winter 1982):144.

    Robert K. Roney, "Tenure Laws and Incompetency," NASSP Bulletin, 61 (February 1977):45.

    Jerome Cramer, "How Would Your Faucets Work if Plumbers Were Shielded by Tenure Laws," The American School Board Journal, 163 (October 1976):22.

    Sidney E. Brown, "Teacher Tenure," Education, 99 (Fall 1978):1.

    Joseph P. Mahan, "The Dismissal, Termination, Demotion, Transfer and Suspension of Professional Personnel: A Constitutional, Statutory, and Case Law Analysis," (Dissertation, Georgia State University, 1976).

20. Board of Trustees v. Superintendent of Public Instruction, 171 Mont. 323, 557 P.2d 1048 (1976).

21. Kellison v. School District No. 1, 20 Mont. 153, 50 P. 421 (1897); Howard v. Ireland, 114 Mont. 488, 138 P2d 569 (1942); Opheim v. State Fish and Game Comm'n., 133 Mont. 362, 323 P2d 1116 (1957); Wyatt v. School District No. 104, 148 Mont. 83, 417 P2d 221 (1966).

22. See Reference Note 17.

23. Paun v. Chouteau Co. School District No. 56 and Murphy v. Hayes Lodge Pole Public Schools, Blaine Co. No. 50, OSPI No. 31-82, 2 Ed. Law 98, May 1983; Gehring v. School District No. 27, Liberty County, OSPI No. 23-82, 2 Ed. Law 33, March 1983; Shutak v. Pondera County School District No. 1, 2 Ed. Law 185, October 1983.

24. Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694 (1972); Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972); Mt. Healthy School District Board of Education v. Doyle, 429 U.S. 274 (1977).

25. Bridger Education Association v. Board of Trustees, Carbon County School District No. 2, 41 St. Rep. 533 (1984).

26. Arizona Education Association, Teacher Tenure Acts in the Fifty States, AEA Legal Services Committee, Phoenix, Arizona, March 1983.

    Washington State Senate, Statutory Requirements of Teacher Contract Laws: A Comparison of the 50 States' Continuing Contract and Teacher Tenure Laws, Senate Research Center, Olympia, Washington, December 1976.

27. Moses v. School District No. 53, Lincoln County, 107 Mont. 300, 86 P.2d 407 (1938).

28. Holter v. Valley County School District No. 13, OSPI No. 29-82, 1 Ed. Law 283, December 1982.

29. See Reference Note 15.

30. Massey v Argenbright and Miles City School District No. 1, 41 St. Rep. 1393 (1984).

31. Massey v. Custer Co. District High School, Decision and Order of the Superintendent of Public Instruction, 2 Ed. Law 28, February 1983.

32. Chapter 424, Laws of Montana, 1971, codified as former sections 75-6115 through 75-6128, R.C.M. 1947.

33. Chapter 117, Laws of Montana, 1975.

34. The county superintendent must conduct the original hearing and the state superintendent must conduct the administrative review of the record, according to the "Rules of Procedure for All School Controversy Contested Cases Before the County Superintendents", Title 10, Chapter 6, Administrative Rules of Montana.

35. Testimony submitted by the Office of Public Instruction at the May 18, 1984, meeting of Joint Interim Subcommittee No. 4.

36. Ibid.

37. Montana Board of Public Education, Standards for Accreditation of Montana Schools, Fourth Edition, Helena, Montana.

38. Ibid.

39. 20-3-207, MCA.

40. See Reference Note 16.

41. Testimony by Representative Tom Jones, March 2, 1984.

42. See Reference Note 17.

43. Robert G. Petix, "Here's How to Reform Teacher Tenure", The Executive Educator, September 1983. Submitted by Bill Black, Taxpayers Education Association, Bozeman, Montana, March 2, 1984.

SUBCOMMITTEE DELIBERATIONS

The following chronology is designed to highlight the steps of the study process, acknowledge major testimony, and list the reports presented to Joint Interim Subcommittee No. 4. Reports are numbered to correspond to the reference on page 51. All reports and minutes of meetings are on file in the Montana Legislative Council library.

1. First Meeting -- September 9, 1983

   A. Staff presented study plan and work design for HJR 43.[1] The Subcommittee approved the plan, including the addition of teacher evaluation practices as a study topic.

   B. Interested persons and organizations voiced support for the study design, including the additional topic of teacher evaluation as it relates to tenure and termination of services.

2. Second Meeting -- March 2, 1984

   A. Staff presented a background report on teacher tenure laws and issues in Montana and in general.[2]

   B. Jesse Long, School Administrators of Montana, stressed the need to consider the following: the length of the appeals process for teacher employment issues; placing evaluation guidelines within the Board of Public Education's accreditation standards rather

than in statute; and allowing school boards to terminate tenure teachers if financial conditions dictate a need for a reduction in force.

C. Ed Argenbright, Superintendent of Public Instruction, and Rick Bartos, his staff attorney, explained the Uniform Rules on School Controversy developed by the Office of Public Instruction (OPI) for use in appeals to the county superintendents and to the state superintendent.[3] Mr. Argenbright explained his role as administrative appeals judge and discussed recent court cases concerning various tenure issues.[4]

D. Wayne Buchanan, Executive Director, Montana School Boards Association, discussed the following: the difficulties and risks that school boards encounter in attempts to remove unsatisfactory teachers; the cost of pursuing a contested teacher dismissal or termination; and protections for teachers beyond tenure, such as constitutional rights, the Human Rights Act, and collective bargaining rights. He proposed no strengthening of the tenure laws and retention of the probationary period.[5]

E. Dave Sexton, Montana Education Association, offered the following suggestions to improve the tenure system: regular and on-going formal teacher evaluations; opportunity and assistance to overcome deficiencies; termination for "just cause" only for any

teacher; basic due process rights for all teachers; a single opportunity for appeal to an impartial arbitrator whose decision would be final and binding; and respect for collective bargaining agreements that already contain some of the above provisions. Mr. Sexton said his organization would oppose any attempt to weaken or eliminate the tenure laws.[6]

F. Interested persons and Subcommittee members discussed teacher evaluation practices, methods of shortening the appeals process, substitution of collective bargaining for tenure rights, and repeal of the tenure laws.

G. Representative Tom Jones submitted a proposal for an alternative system of due process in lieu of tenure. See page 37.

3. Third Meeting -- April 13, 1984

A. Staff presented a report on the main issues within the tenure study and options available for addressing the issues.[7]

B. In an elaboration on the role of teacher evaluation within the tenure system, staff presented a report on teacher evaluation practices in Montana and other states.[8]

C. Interested persons and Subcommittee members discussed the issues and options in the staff report.

D. Jim McGarvey, Montana Federation of Teachers, discussed his proposal to allow a teachers' collective bargaining representative and a school board to agree to waive the tenure laws in order to negotiate substitute provisions.

E. Staff was directed to draft legislation on: improved due process in dismissal cases; allowing a return to classroom salary when an administrator is returned to a classroom position; and clarification that economic necessity is grounds for terminating a tenure teacher.

4. Fourth Meeting -- May 18, 1984

A. Robert L. Anderson and Claudette Morton, Office of Public Instruction, presented a report on the Montana Educational Challenge Project designed to improve the accreditation process and to examine current teacher evaluation policies and how schools use instruction time.[9]

B. Dr. Bill Anderson, Deputy Superintendent, OPI, reviewed the educational administrative appeals process and presented the following recommendations on improvements in the process: county superintendents would have 45 days (as opposed to 90 days now) to conduct a thorough hearing of record; and appeals from the state superintendent would go directly to the Montana Supreme Court.

The entire process could take no longer than 145 days.[10]

C. The Subcommittee approved LC 20, providing teachers with notice of intent to recommend dismissal under contract and providing for a hearing prior to dismissal.

D. The Subcommittee failed to approve LC 21, allowing trustees to terminate a tenure teacher when the financial condition of the district requires a reduction in the number of teachers employed or a reduction in funding for the school program for which the teacher is employed.

E. The Subcommittee approved LC 22, providing that a tenure teacher who is employed in an administrative position may be assigned to a teaching position with a reduction in salary.

F. Staff presented a report on the legal aspects of repealing tenure and the use of binding arbitration in tenure disputes.[11]

5. Fifth Meeting -- September 28, 1984

A. The Subcommittee approved LC 53, revising the procedure for termination of the services of a tenure teacher.

B. The Subcommittee failed to approve LC 54, allowing the exclusive representative of teachers of a district and the trustees to negotiate the waiver of statutory tenure

provisions and to negotiate substitution of related conditions of employment.

C. The Subcommittee also failed to approve LC 55, eliminating the status of tenure for teachers and providing for alternative due process procedures for the termination of a teacher.

D. Dick Trerise, speaking for the Montana Association of County School Superintendents, asked the Subcommittee to clarify whether a nontenure teacher would have the right to appeal on the sufficiency of the reasons given for the teacher's termination. The Subcommittee did not further address this issue.

REPORTS AND TESTIMONY REFERENCED IN DELIBERATIONS

[1]Montana Legislative Council, "Tentative Study Plan For HJR 43: A Study of Teacher Tenure Laws," report by Andrea Merrill, staff researcher, to Joint Interim Subcommittee No. 4, September 1983.

[2]Montana Legislative Council, "Teacher Tenure in Montana: An Overview of the Laws and Issues," report by Andrea Merrill, staff researcher, to Joint Interim Subcommittee No. 4, March 1984.

[3]"Rules of Procedure for All School Controversy Contested Cases Before the County Superintendents", Superintendent of Public Instruction, Title 10, Chapter 6, Administrative Rules of Montana.

[4]Testimony by Ed Argenbright, Superintendent of Public Instruction, March 2, 1984.

[5]Testimony by Wayne Buchanan, Montana School Boards Association, March 2, 1984.

[6]Testimony by Dave Sexton, Director of Teacher Rights and Governmental Relations, Montana Education Association, March 2, 1984.

[7]Montana Legislative Council, "Issues and Options Checklist on Teacher Employment Laws," report by Andrea Merrill, staff researcher, to Joint Interim Committee No. 4, revised April 1984.

[8]Montana Legislative Council, "Teacher Evaluation in Teacher Employment Issues," report by Andrea Merrill, staff researcher, to Joint Interim Subcommittee No. 4, March 1984.

[9]Office of Public Instruction, "Montana Educational Challenge Project", Robert R. Anderson, project coordinator, Office of Public Instruction, October 1983.

[10]Office of Public Instruction, "Office of Public Instruction's Due Process," Rick Bartos, staff attorney for Office of Public Instruction", May 9, 1984.

[11]Montana Legislative Council, "Binding Arbitration and Grandfathering Tenure Rights", report by Lee Heiman, staff attorney, report to Joint Interim Subcommittee No. 4, May 18, 1984.

APPENDIX

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF JOINT INTERIM SUBCOMMITTEE NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A TEACHER WITH NOTICE OF INTENT TO RECOMMEND DISMISSAL OF THE TEACHER WHILE UNDER CONTRACT WITH A SCHOOL DISTRICT; TO PROVIDE A TENURE TEACHER WITH NOTICE OF INTENT TO RECOMMEND TERMINATION OF SERVICES; TO PROVIDE FOR A HEARING ON THE RECOMMENDATION BEFORE THE BOARD OF TRUSTEES OF A DISTRICT PRIOR TO THE DISMISSAL OF A TEACHER OR THE TERMINATION OF SERVICES OF A TENURE TEACHER; AMENDING SECTIONS 20-4-204 AND 20-4-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-4-204, MCA, is amended to read:

"20-4-204. Termination of tenure teacher services. (1) (a) Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of 20-4-203, they shall, before April 1, notify such teacher of such termination in writing by certified or registered letter or by personal notification for which a signed receipt is returned. Such notification shall include a printed copy of this section for the teacher's information.

(2) Any tenure teacher who receives a notice of termination may request, in writing, 10 days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within 10 days after the request.

(3) Within 10 days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within 10 days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before April 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

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(5) The tenure teacher may appeal their a decision to terminate to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

~~(4)~~(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title."

Section 2. Section 20-4-207, MCA, is amended to read:

"20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the

recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of his right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with or without pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the

effective operation of the school district.

~~(5)~~(5) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal a hearing shall be held within 10 days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal."

-End-

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF JOINT INTERIM SUBCOMMITTEE NO. 4

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A TENURE TEACHER WHO IS EMPLOYED IN AN ADMINISTRATIVE POSITION MAY BE ASSIGNED TO A TEACHING POSITION WITH A REDUCTION IN SALARY; AMENDING SECTION 20-4-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-4-203, MCA, is amended to read:

"20-4-203. Teacher tenure. (1) Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, except as provided in subsection (2), unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) A tenure teacher who is employed in an administrative position may be assigned to a teaching

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position for which the teacher is certified, with a reduction in salary. The salary for the new assignment must be the same or more than the salary that the teacher would have received if the teacher had been continuously employed in the new assignment rather than in the administrative position.

(3) For the purposes of this section, "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, including the position of principals, vice principals or director of a department, but not including the district superintendent."

-End-

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